

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

July 22, 2009

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Second Time Extension Request for After the Fact Conservation District Use Permit (CDUP) MA-3439 for the Wailuku Country Estates Water Storage Tank with Associated Improvements and Subdivision of Land

**AGENT/
LANDOWNER:** Tim Lui-Kwan of Carlsmith Ball LLP for
Wahi Hoomalu Limited Partnership

LOCATION: Wailuku, Island of Maui

TMK: (2) 3-3-002:001

SUBZONE: Resource

BACKGROUND:

On January 11, 2008, the Board of Land and Natural Resources (Board) approved After the Fact CDUP MA-3439 for the Wailuku Country Estates Water Storage Tank with Associated Improvements and Subdivision of Land, subject to 14 terms and conditions (**Exhibit 1**).

On January 23, 2009, the Board of Land and Natural Resources approved a 180-day time extension for CDUP MA-3439 to July 10, 2009, to complete the processing of a subdivision to convey a portion of TMK: (2) 3-3-002:001 located at Wailuku, Island of Maui, noted as the tank site to the County of Maui, subject to all conditions imposed by the Board under CDUP MA-3439.

TIME EXTENSION REQUEST:

On July 9, 2009, the Department received a second time extension request on behalf of the landowner to extend the processing time to complete the subdivision to convey the water tank site to the County of Maui. The request is for a 180-day extension. (**Exhibit 2**).

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in §13-5-43, Hawaii Administrative Rules (HAR), which allows for Permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit. Additionally, §13-5-43, HAR, states that: "All time extensions shall be submitted to the department thirty days before the expiration deadline. If a request is received less than thirty days before the due date the request for time extension shall be forwarded to the Board for review."

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in completing work on a particular project. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

In the present case, condition #12 of CDUP MA-3439 requires that the water tank site and the associated improvements be conveyed to the County of Maui or the permit shall be null and void. The facility is under the control of Maui County as the landowner has granted an easement to the County of Maui for the tank lot as well as grants of easement for the access road and drainage improvements that were authorized. Progress has been made during the past six months, however the subdivision application is still pending with the County of Maui as the landowner and the county work out an agreement. None of these factors suggest any reason to deny the requested time extension. Staff, therefore, has the following:

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** a 180-day time extension for CDUP MA-3439 to January 6, 2010, to complete the processing of a subdivision to convey a portion of TMK: (2) 3-3-002:001 located at Wailuku, Island of Maui, noted as the tank site to the County of Maui subject to all conditions imposed by the Board under CDUP MA-3439.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LAND
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA M. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

RUSSELL Y. TSUII
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KATOLLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

CDUP: MA-3439

Tim Lui-Kwan
Carlsmith Ball, LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813

JAN 14 2008

Dear Mr. Lui-Kwan,

SUBJECT: After the Fact Conservation District Use Permit (CDUA) MA-3439 for the Wailuku Country Estates Water Storage Tank w/Associated Improvements and Subdivision of Land

This is to inform you that on January 11, 2008, the Board of Land and Natural Resources approved your client's Conservation District Use Application (CDUA) MA-3439 for the Wailuku Country Estates Water Storage Tank w/Associated Improvements and Subdivision of Land located at Wailuku, island of Maui, TMK:(2) 3-3-002:001 subject to the following conditions:

1. The Landowner shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. The Landowner, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The Landowner shall comply with all applicable Department of Health administrative rules;
4. All representations relative to mitigation set forth in the accepted environmental assessment for the proposed use are incorporated as conditions of the permit;
5. The Applicant/Landowner understands and agrees that this permit does not convey any vested rights or exclusive privilege;
6. In issuing this permit, the Department and Board have relied on the information and data that the Applicant has provided in connection with this permit application. If, subsequent

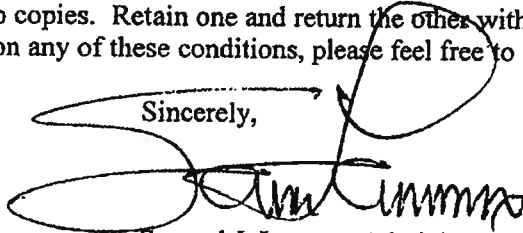
EXHIBIT 1

to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the Landowner shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. All activities connected with the project shall be contained within the project area as identified in the application;
9. The Applicant/Landowner shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, within one year of this approval;
10. The Landowner shall provide written documentation notifying the Office of Conservation and Coastal Lands of the new Tax Map Key identifying the Zone, Section, Plat, and Parcel number of the subdivided portion out of parcel 001;
11. The Landowner shall clearly post signage on prohibitive activities and the associated penalties and fines for such activities;
12. Should the Water Tank Site and the Associated Improvements not be conveyed to the County of Maui, this permit shall be null and void;
13. Other terms and conditions as may be prescribed by the Chairperson; and
14. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

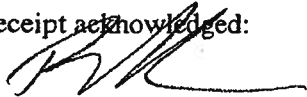
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Tiger Mills at 587-0382.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:



Applicant's Signature

Date 1-21-08

c: MDLO/CWRM
County of Maui
Department of Planning
Department of Water Supply

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2200
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

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OFFICE OF CONSERVATION
AND COASTAL LANDS
2009 JUL 10 A 8:49
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DIRECT DIAL NO.
808.523.2511

TLUIKWAN@CARLSMITH.COM

OUR REFERENCE NO.:
055606-0001

July 9, 2009

Ms. Laura H. Thielen, Chairperson
Attn: Mr. Sam Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land & Natural Resources
1151 Punchbowl Street, Room 131
P.O. Box 621
Honolulu, HI 96809-0621

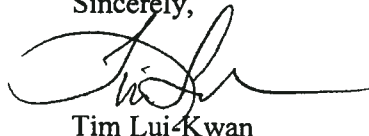
Re: After the Fact Conservation District Use Permit (CDUP MA-3439) for the
Wailuku Country Estates Water Storage Tank Subdivision and Associated
Improvements; TMK (2) 3-3-002:001 (portion), Wailuku, Maui, Hawaii

Dear Mr. Lemmo:

On behalf of Wahi Ho'omalulu Limited Partnership, the owner of the above property, we are requesting another extension of 180 days to complete the subject subdivision. On January 23, 2009, the Board of Land and Natural Resources did approve an extension of 180 days up to July 10, 2009 to complete the subdivision and convey the tank site to the County of Maui.

The landowner, together with the County Department of Water Supply has been working to complete the subject subdivision over the past 6 months. However, the subdivision application is still pending with the County of Maui as reflected in the attached letter from the landowner's legal counsel, Tom Leutenecker of my Maui office, to Mr. Jeffrey Hunt, the Maui County Planning Director. It is my understanding that only one final condition remains to be completed before the County can approve the subject subdivision. We are hopeful that this final condition will be resolved with approval of the subdivision and conveyance of the parcel to the County in the very near future. Thank you for your assistance in this request.

Sincerely,



Tim Lui-Kwan

Attachment (Letter dated June 9, 2009 from Tom C. Leutenecker, Esq. to Jeffrey S. Hunt)

HONOLULU

HILO

KONA

MAUI

GUAM

SAIPAN

LOS ANGELES

EXHIBIT 2

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ONE MAIN PLAZA, SUITE 400
2200 MAIN STREET, P.O. BOX 1086
WAILUKU, MAUI, HAWAII 96793-1086
TELEPHONE 808.242.4535 FAX 808.244.4974
WWW.CARLSMITH.COM

TCL@CARLSMITH.COM

June 9, 2009

Jeffrey S. Hunt
Director
County of Maui Department of Planning
250 S. High St
Kalana Pakui Bldg Ste 200
Wailuku, HI 96793

Re: Iao Valley Large Lot Subdivision No. 3.2047 / Wahi Ho`omalu

Dear Jeff:

Two water tank sites which provide potable water to the Wailuku Country Estates are located on land owned by Wahi Ho`omalu Limited Partnership, on Tax Key (2) 3-3-02-01. Since the Wailuku Country Estates developer, CGM LLC, has not completed the subdivision and deeding of these water tank sites to the County Department of Water Supply, Wahi Ho`omalu has undertaken to complete this work.

We have a variance from the two acre minimum lot size for the tank site which is on ag land, and we have an After the Fact Conservation District Use Permit (CDUP) from the Department of Land and Natural Resources on the tank site located on conservation land. The DLNR has given us a time extension to July 10, 2009 to complete the processing of the subdivision.

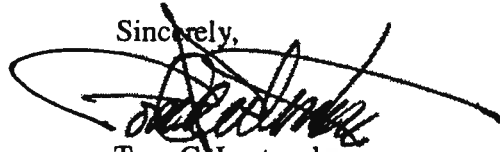
We have all of the subdivision conditions met, we believe, except that the Public Works Department, Development Services Administration, has not accepted our Agreement for the Allocation of Future Subdivision Potential. The Code, section 19.30A.030-G, says that the Agreement is based on the gross area which is the tax map key parcel as certified by the real property tax division. We have a certification from the real property tax division (copy enclosed) which says that TMK (2) 3-3-02-01 contains a total area of 834.016 acres, of which 336.666 acres are in ag land use and 497.35 acres are in conservation land use. However Lesli Otani at DSA says that we must submit a confirmation from the Department of Planning as to the land area in the subdivision within the ag district.

We also enclose a map prepared by Reed Ariyoshi for Warren S. Unemori, Engineering, which shows that the total area of Lot A-1, which is TMK (2) 3-3-02-01, is 834.016 acres.

Jeffrey S. Hunt
June 9, 2009
Page 2

Thus we would like a letter from you confirming that the land area in this subdivision within the ag district is 336.666 acres. There is a great urgency because the DLNR time limit is July 10, 2009. Thank you.

Sincerely,



Tom C. Leuteneker

TCL/rkp

cc: John Russell, Leslie Otani, Wendy Taomoto, Darren Unemori, Tim Lui Kwan

4839-6382-0291.1